

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

Cody Queen, individually and on behalf of all other
similarly situated individuals,

Plaintiff,

v.

Zefco, Inc., William Zearley, and Lanette Zearley

Defendants.

Civil Action No.: 8:20-cv-02629-TMC

**DEFENDANTS' MOTION TO
DISMISS AMENDED COMPLAINT**

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6), Defendants Zefco, Inc., William Zearley, and Lanette Zearley ("Defendants") hereby move to dismiss the Amended Complaint filed against them *with prejudice* on the same grounds as set forth in the Order dismissing the claims asserted against these Defendants in *Queen v. Zefco, Inc., et. al.*, No. 8:19-cv-2966-TMC, Dkt. Entry 30 (June 18, 2020), as well as other grounds set forth herein and in the Memorandum in Support of Defendants' Motion to Dismiss, which is being filed herewith. In sum, Defendants' Motion to Dismiss is based on the following grounds:

1. 26 U.S.C. § 7434 prohibits the over-reporting of income and does not prohibit the under-reporting of income, which is all that Plaintiff has alleged and, therefore, Plaintiff has not alleged and cannot allege a violation of 26 U.S.C. § 7434;
2. Plaintiff lacks standing to pursue these claims under Article III of the United States Constitution because Plaintiff has failed to allege a sufficient "injury in fact";
3. Plaintiff has failed to plead sufficient facts to meet this heightened standard of Fed. R. Civ. P. 9(b);

4. An action under 26 U.S.C. § 7434 can only be maintained against a person who “*files* a fraudulent information return,” and Plaintiff has failed to allege which of the Defendants filed the alleged fraudulent information returns; and

5. Plaintiff cannot maintain a claim based on misclassification of employees because Plaintiff does not allege that he was misclassified and, even if he did allege he was misclassified, “Section 7434 provides no remedy for a person incorrectly classified as an independent contractor” *Tran v. Tran*, 239 F. Supp. 3d 1296, 1298 (M.D. Fla. 2017).

The complete grounds for this motion are set forth in the accompanying Memorandum.

Respectfully submitted,

s/ Denny P. Major

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